IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

OP.No. 24027 of 2000(I)

PETITIONER:

A.A.SEKHARAN, S/O.APPU,
ATTUPARAMBIL HOUSE, VELLAMKALLOOR,
THEKKUMKARA VILLAGE, MUKUNDAPURAM.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS:

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1) STATE OF KERALA, REP: BY THE
DISTRICT COLLECTOR, THRISSUR.

2) THE DEPUTY TAHSILDAR, RECENUE RECOVERY,
TALUK OFFICE, MUKUNDAPURAM.

3) THE VILLAGE OFFICER,
THEKKUMKARA VILLAGE, THEKKUMKARA.

BY GOVERNMENT PLEADER SRI.SALIM P.A.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.40594 OF 2000 IN OP.NO.24027 OF 2000-I.

DISMISSED.

19.10.2007. **Sd/- T.R.Ramachandran Nair, Judge.**

PETITIONER'S EXHIBITS:-

Ext.P1: Copy of the notice No.D5 24206/98 dtd.21/12/1998.

RESPONDENTS' EXHIBITS:- Nil.

(true copy)

P.A. TO JUDGE.

Kvs/-

T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 24027 of 2000-I.

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Dated this the 19th day of October, 2007.

J U D G M E N T

The petitioner is challenging Ext.P1 demand notice issued under the Revenue Recovery Act. The dues mentioned is stated as arrears to the Police Department. The facts which emanate from the pleadings show that he was the plaintiff in OS.Nos.1553/1988 and 1611/1988 before the Munsiff Court, Thrissur. In the said suits the learned Munsiff had granted interim order of injunction as prayed for in IA.No.3318/1988 in OS.No.1553/1988 and in IA.No.3385/1988 in OS.No.1611/1988. By those orders the defendants were restrained from interfering with the operation of two buses owned by the petitioner. Even after the interim orders were passed there were obstruction for running the buses which compelled him to move the said court for assistance of the police to implement the interim orders. It is averred that the said court had allowed the assistance of the police sought for and accordingly the orders were implemented with police help. The petitioner was called upon years later, to pay the amount which appears to have been spent for affording protection. Ext.P1 is the notice thus served on him.

2. The learned counsel for the petitioner relied upon the Bench decision of this Court in *District Superintendent of Police v. George* (2000 (1) KLT 628) wherein it was held that the Government cannot demand charges for affording police protection pursuant to an order of the court granting the said protection. After analysing the legal issue it was held by this Court in the following terms:

> **"Barring exceptional circumstances, we are of the opinion that the State would not be justified in claiming charges from citizens for affording police protection to remove or prevent obstruction to a lawful activity carried on by a citizen in exercise of his constitutional right. Thus, it is an integral part of the functions of the police who are repositories of statutory power to maintain law and order in a locality, which is a sovereign function incapable of being delegated. Such functions are to be exercised by the State themselves. If, therefore, maintenance of law and order is a sovereign function which belongs to the exclusive realm of the State, we fail to comprehend how the expenditure incurred by the State for discharge of such a sovereign function could be realised from a citizen for no fault of the latter. Where there is a breach of law, it affords adequate justification for the police officials to exercise the statutory powers vested in them. The role of the police in that regard is to prosecute the perpetrators of the offence and to prevent commission of such offence in future. Prosecution of the offenders of law is also part of the exclusive functions of the police officials which will have to be done in accordance with the law of the land. Prevention of crime is also the official functions of the police. Affording police protection to the continuation of a lawful activity or when the right of a citizen is in jeopardy therefore falls in the latter category. If that be so, it is part of the sovereign functions of the State and it would be unconstitutional in the circumstances to recover from the respondents the expenditure incurred for the police officials exercising its functions which is exclusively vested in it."**

3. The respondents have not filed any counter affidavit traversing the contentions raised by the petitioner. Ext.P1 expressly states that the amount represents "dues to Police Department". There is no case for the respondents that any other amount is due from the petitioner.

4. In the light of the dictum laid down by the Division Bench of this Court, herein the demand evidenced by Ext.P1 towards charges for granting police protection is illegal. It is not disputed that the police protection was granted pursuant to the orders passed by the Munsiff Court, Thrissur. Therefore, Ext.P1 is quashed and it is declared that the revenue recovery proceedings taken against the petitioner and against his properties are illegal.

The Original Petition is allowed as above.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-